



# Special Education Rights of Parents and Children

Under the Individuals with Disabilities Education Act, Part B

## • Notice of Procedural Safeguards • Revised February 2004

Note: The term school district is used throughout this document to describe any public education agency responsible for providing your child's special education program. The term assessment is used to mean evaluation.

### What are procedural safeguards?

This information provides you as parents, legal guardians, and surrogate parents of children with disabilities from 3 years of age through age 21 with an overview of your educational rights, sometimes called procedural safeguards.

This information is your Notice of Procedural Safeguards as required under the Individuals with Disabilities Education Act (IDEA). This notice is also provided for students who are entitled to these rights at age 18. (20 USC 1415; EC 56321)

### What is the IDEA?

The IDEA is a federal law that requires school districts to provide a free appropriate public education to eligible children with disabilities. A "free appropriate public education" means special education and related services are to be provided as described in an individualized education program (IEP) and under public supervision to your child at no cost to you.

### Can I participate in decisions about my child's education?

You have the right to refer your child for special education services. You must be given opportunities to participate in any decision-making meeting regarding your child's special education program.

You have the right to participate in IEP meetings about the identification (eligibility), assessment, educational placement of your child and other matters relating to your child's free appropriate public education. (20 USC 1414[b][c][d] and [f]; EC 56341[b], 56343[c])

You also have the right to participate in the development of the IEP and to be informed of the availability of free appropriate public education, including all program options, and of all available alternative programs, both public and nonpublic. (EC 56321, 56301, and 56506)

### Where can I get more help?

When you have a concern about your child's education, it is important that you call or contact your child's teacher or administrators to talk about your child and any problems you see. Staff in your school district or special education local plan area (SELPA) can answer questions about your child's education, your rights, and procedural safeguards.

When you have a concern, this informal conversation often solves the problem and helps to maintain open communication. Additional resources are listed at the end of this document to help you understand the procedural safeguards.

# **Notice, Consent, Assessment, and Access**

## **Prior Written Notice**

### **When is notice needed?**

The school district must inform you about proposed evaluations of your child in a written notice that is understandable and in your native language or other mode of communication, unless it is clearly not feasible to do so.

This notice must be given when the school district proposes or refuses to initiate a change in the identification, assessment, or educational placement of your child with special needs or the provision of a free appropriate public education. (20 USC 1415[b]; EC 56329, 56506[a])

### **When will I be notified?**

The Notice of Procedural Safeguards must be given to you:

- When you ask for a copy;
- The first time your child is referred for a special education assessment;
- Each time you receive a written notice of an IEP meeting for your child (including IEP meetings held regarding disciplinary actions);
- Each time your child is reassessed;
- Each time you request mediation; and
- Each time you request a due process hearing.

(20 USC 1415[d]; EC 56301, 56321, 56500.3[k], 56506[a])

### **What will the notice tell me?**

The Prior Written Notice must include the following:

1. A description of the actions proposed or refused by the school district;
2. An explanation of why the action was proposed or refused;
3. A description of any other options considered and the reasons those options were rejected;
4. A description of each assessment procedure, test, record or report used as a basis for the action proposed or refused;
5. A description of any other factors relevant to the action proposed or refused; and
6. A statement that parents of a child with a disability are protected by the procedural safeguards.

If the notice is not in regard to an initial referral for assessment, the notice must provide a statement that you have protection under procedural safeguards; information on how you can obtain a copy of described procedural safeguards; and sources of additional assistance in understanding the procedural safeguards. (20 USC 1415[c])

## **Parent Consent**

### **When is my approval required?**

You must give informed, written consent before your child's first special education assessment can proceed and before the school district can provide your child's special education program.

In the case of reevaluations, the school district must document reasonable attempts to obtain your consent. If you as the parent do not respond to these attempts, the school district may proceed with the reevaluation without your consent. (EC 56321[c], 56346, 56506[e]; 20 USC

1414[a][c])

## **Surrogate Parent Appointment**

### **What if the parent cannot be identified or located?**

School districts must ensure that an individual is assigned to act as a surrogate parent for the parents of a child with a disability when a parent cannot be identified and the school district cannot discover the whereabouts of a parent.

A surrogate parent may also be appointed if the child is an adjudicated dependent or ward of the court under the state Welfare and Institution Code and the child is referred to special education or already has an IEP. (20 USC 1415[b]; EC 56050)

## **Nondiscriminatory Assessment**

### **How is my child assessed for special education services?**

You have the right to have your child assessed in all areas of suspected disability. Materials and procedures used for assessment and placement must not be racially, culturally, or sexually discriminatory.

Assessment materials must be provided and the test administered in your child's native language or mode of communication, unless it is clearly not feasible to do so.

No single procedure can be the sole criterion for determining eligibility and developing an appropriate educational program for your child. (20 USC 1414[a][b]; EC 56001[j] and 56320)

## **Independent Educational Assessments**

### **Can my child be tested independently at the district's expense?**

If you disagree with the results of the assessment conducted by the school district, you have the right to ask for and obtain an independent educational assessment for your child from a person qualified to conduct the assessment at public expense.

The school district must respond to your request for an independent educational assessment and provide you information upon request about where to obtain an independent educational assessment.

If the school district disagrees that an independent assessment is necessary, the school district must request a due process hearing to prove that its assessment was appropriate. If the district prevails, you still have the right to an independent assessment but not at public expense. The IEP team must consider independent assessments. (20 USC 1415; EC 56506[c] and 56329[b]; 34 CFR 300.502)

District assessment procedures allow in-class observation of students. If the school district observes your child in his or her classroom during an assessment, or if the school district would have been allowed to observe your child, an individual conducting an independent educational assessment must also be allowed to observe your child in the classroom.

If the school district proposes a new school setting for your child and an independent educational assessment is being conducted, the independent assessor must be allowed to first observe the

proposed new setting. (EC 56329[b] and [c])

## **Access to Educational Records**

### **Can I examine my child's educational records?**

You have a right to inspect and review all of your child's education records without unnecessary delay including prior to a meeting about your child's IEP or before a due process hearing. The school district must provide you access to records and copies if requested, within five days after the request has been made orally or in writing. (20 USC 1415[b]; EC 56501, 56504, and 49069)

## **How Disputes are Resolved**

### **Due Process Hearing**

#### **When is a due process hearing available?**

You have the right to request an impartial due process hearing regarding the identification, assessment, and educational placement of your child or the provision of a free appropriate public education. The request for a due process hearing must be filed within three years from the date you knew or had reason to know of the facts that were the basis for the hearing request. (20 USC 1415[a][b]; EC 56501, 56505[j], and 56043[p])

### **Mediation and Alternative Dispute Resolution**

#### **Can I request mediation or an alternate way to resolve the dispute?**

You may ask the school district to resolve disputes through mediation or alternative dispute resolution (ADR), which

is less adversarial than a due process hearing. ADR and mediation are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing.

The parents and the school district must agree to try mediation before mediation is attempted. A mediator is a person who is trained in strategies that help people come to agreement over difficult issues. (20 USC 1415[e]; EC 56500.3)

### **Due Process Rights**

#### **What are my due process rights?**

You have a right to:

1. Have a fair and impartial administrative hearing at the state level before a person who is knowledgeable of the laws governing special education and administrative hearings (EC 56501[b]);
2. Be accompanied and advised by an attorney and/or individuals who have knowledge about children with disabilities (EC 56505 [e]; 20 USC 1415[h]);
3. Present evidence, written arguments, and oral arguments (EC 56505[e]);
4. Confront, cross-examine, and require witnesses to be present (EC 56505[e]);
5. Receive a written or, at the option of the parent, an electronic verbatim record of the hearing, including findings of fact and decisions (EC 56505[e]; 20 USC 1415 [h]);
6. Have your child present at the hearing (EC 56501[c]);
7. Have the hearing be open or closed to the public (EC 56501[c]);
8. Be informed by the other parties of the issues and their proposed resolution of the issues at least ten

calendar days prior to the hearing (EC 56505[e] and 56043[s]; 20 USC 1415[b]);

9. Receive a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general area of testimony within five business days before a hearing (EC 56505[e] and 56043[t]);
10. Have an interpreter provided (CCR 3082[d]);
11. Request an extension of the hearing timeline (EC 56505[f]);
12. Have a mediation conference at any point during the due process hearing (EC 56501[b]); and
13. Receive notice from the other party at least ten days prior to the hearing that it intends to be represented by an attorney (EC 56507[a]).

## **Filing a Written Due Process Complaint**

### **How do I request a due process hearing?**

You need to file a written request for a due process hearing. You or your representative need to submit the following information in your request:

1. Name of the child;
2. Address of the residence of the child;
3. Name of the school the child is attending;
4. A description of the nature of the problem, including facts relating to the problem(s) and a proposed resolution of the problem(s).

State law requires that either party filing for a due process hearing must provide a copy of the written request to the other party. (20 USC 1415[h]; EC 56502[a])

After a written request is filed, a due process hearing is immediately scheduled, including any mediation conference, and must be completed within 45 days of the request, with a written, final decision provided. (EC 56505[f])

### **Does my child's placement change during the proceedings?**

The child involved in any administrative or judicial proceeding must remain in the current educational placement unless you and the school district agree on another arrangement. If you are applying for initial admission to a public school, your child will be placed in a public school program with your consent until all proceedings are completed. (20 USC 1415[j]; EC 56505[d] and [i])

### **Can the decision be appealed?**

The hearing decision is final and binding on both parties. Either party can appeal the hearing decision by filing a civil action in state or federal court within 90 days of the final decision. (20 USC 1415[i]; EC 56505[g] and [i]; EC 56043[u])

### **Who pays for my attorneys' fees?**

In any action or proceeding regarding the due process hearing, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you as parent of a child with a disability if you are the prevailing party in the hearing. Reasonable attorneys' fees may also be made following the conclusion of the administrative hearing with the agreement of the parties. (20 USC 1415[i]; EC 56507[b])

Fees may be reduced if any of the following conditions prevail:

1. The court finds that you unreasonably delayed the final resolution of the controversy;
2. The hourly attorneys' fees exceed the prevailing rate in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
3. The time spent and legal services provided were excessive; or
4. Your attorney did not provide to the school district the appropriate information in the due process complaint.

Attorneys' fees will not be reduced, however, if the court finds that the state or the school district unreasonably delayed the final resolution of the action or proceeding or there was a violation of this section of law. (20 USC 1415[i])

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless an IEP meeting is convened as a result of a due process hearing proceeding or judicial action. Attorney fees may also be denied if you reject a reasonable settlement offer made by the district/public agency ten days before the hearing begins and the hearing decision is not more favorable than the settlement offer. (20 USC 1415[d])

## **School Discipline and Placement Procedures for Students with Disabilities**

### **School Discipline**

#### **Can my child be suspended or expelled?**

Children with disabilities may be suspended or placed in other alternative interim settings or other settings to the

same extent these options would be used for children without disabilities.

If a child exceeds ten days in such a placement, an IEP meeting must be held to determine whether the child's misconduct is caused by the disability. This IEP meeting must take place immediately, if possible, or within ten days of the school district's decision to take this type of disciplinary action. (20 USC 1415[k])

As a parent, you will be invited to participate as a member of this IEP team. The school district may be required to develop an assessment plan to address the misconduct or, if your child has a behavior intervention plan, review and modify the plan, as necessary.

If the IEP team concludes that the misconduct was not a manifestation of your child's disability, the school district may take disciplinary action, such as expulsion, in the same manner as it would for a child without disabilities.

If you disagree with the IEP team's decision, you may request an expedited due process hearing from the California Department of Education's Special Education Hearing Office. (20 USC 1415[k])

### **Alternative Interim Educational Settings**

#### **Can my child be placed in an alternative interim educational setting for disciplinary purposes?**

Federal law allows the use of alternative educational placements under certain disciplinary circumstances. However, state law regarding the "stay put" provision described above overrides federal law regarding the use of alternative educational placements. Consequently, school

personnel in California do not have the right to make 45-day placements for disciplinary purposes unless the parent agrees or there is a court order to do so. (20 USC 1415[j][k][l])

Regardless of the setting, the school district must continue to provide a free appropriate public education for your child. Alternative educational settings, when permissible, must allow the child to continue to participate in the general curriculum and ensure continuation of services and modifications detailed in the IEP. (20 USC 1415[k])

## **Children Attending Private School**

### **When is reimbursement required for private school tuition?**

Children who are enrolled by their parents in private schools may participate in publicly funded special education programs. While school districts have the clear responsibility to offer a free appropriate public education to students with disabilities, recent changes to federal law have significantly limited the school district's responsibility to provide services to students whose parents have chosen for them to attend private schools. Federal law limits the amount that school districts must spend of the federal entitlement to a proportionate share of federal IDEA funds.

Parents are entitled to reimbursement for costs associated with the private school placement only if a court or hearing officer determines that the public agency had not made a free appropriate public education available to the child. (20 USC 1412[a]; EC 56175; 34 CFR 300.453)

### **When may reimbursement be reduced or denied?**

The court or hearing officer may reduce or deny reimbursement if you did not make your child available for an assessment upon notice from the school district before removing your child from public school. You may also be denied reimbursement if you did not inform the school district that you were rejecting the special education placement proposed by the school district and gave notice of your concerns and intent to enroll your child in a private school at public expense.

Your notice to the school district must be given either:

- At the most recent IEP meeting you attended before removing your child from the public school; or
- In writing to the school district at least ten business days (including holidays) before removing your child from the public school. (20 USC 1412[a]; EC 56174, 56176)

### **When can reimbursement not be reduced or denied?**

A court or hearing officer may not reduce or deny reimbursement to you if you failed to notify the school district for any of the following reasons:

- Illiteracy and inability to write in English;
- Giving notice would likely result in physical or serious emotional harm to the child;
- The school prevented you from giving notice; or
- You had not received a copy of this Notice of Procedural Safeguards or otherwise been informed of this notice requirement.

(20 USC 1412[a]; EC 56177[a][b][c][d])

## **Observation of Your Child at a Nonpublic School**

If you unilaterally place your child in a nonpublic school and you propose the placement in the nonpublic school to be publicly financed, the school district must be given the opportunity to observe the proposed placement and your child in the proposed placement.

The school district may not observe or assess any other child at the nonpublic school without permission from the other child's parent or guardian. (EC 56329[d])

## **Additional Information**

### **Where do I file a complaint?**

To obtain more information about dispute resolution, including how to file a complaint, contact the California Department of Education, Special Education Division, Procedural Safeguards Referral Service (PSRS) at: (800) 926-0648 or fax (916) 327-3704) or visit the Department's WEB site at <http://www.cde.ca.gov/spbranch/sed>

Complaints alleging violations of IDEA may be mailed to:

California Department of Education  
Special Education Division  
Procedural Safeguards Referral Service  
1430 N Street, Suite 2401  
Sacramento, CA 95814  
Attention: PSRS Intake

For complaints involving issues not covered by IDEA, consult your district's Uniform Complaint Procedures (UCP).

## **Where do I file a request for mediation or due process hearing?**

To obtain more information or to file for mediation or a due process hearing, contact:

McGeorge School of Law  
Special Education Hearing Office  
3200 Fifth Avenue  
Sacramento, CA 95817  
Telephone: (916) 739-7053  
Fax: (916) 739-7066

## **Resources**

### **Parent Training and Information Centers**

#### **Northern California**

Parents Helping Parents of San Francisco:  
(415) 841-8820

Support for Families of Children with Disabilities: (415) 282-7494

Matrix, A Parent Network and Resource Center: (415) 884-3535

Disability Rights Education Defense Fund (DREDF): (510) 644-2555

Parents Helping Parents: (408) 727-5775

#### **Central California**

Exceptional Family Support Education and Advocacy Center: (530) 876-8321

Exceptional Parents Unlimited: (559) 229-2000



## **Southern California**

Team of Advocates for Special Kids  
(TASK): (714) 533-8275

Team of Advocates for Special Kids  
(TASK), San Diego: (619) 874-2386

### **Community-Based Projects**

Vietnamese Parents of Disabled Persons:  
(310) 370-6704

Loving Your Disabled Child: (323) 299-  
2925

Parents of Watts: (213) 566-7556

### **Other Resources**

National Information Center for Youth and  
Children with Disabilities: (800) 695-0285  
*Provides information on special education  
on its web site and through printed  
materials.*

Protection and Advocacy, Inc.: (800) 776-  
5746  
*Funded federally to advocate for people  
with disabilities.*

California Services for Technical Assistance  
and Training (CalSTAT): (707) 849-2278  
*Provides training on IDEA through  
workshops and Internet coursework.*

Resources in Special Education (RiSE):  
(707) 206-0533, ext. 102  
RiSE library: (408) 727-5775, ext. 110